

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No. 1:21-cr-260-LMB
)	
JAIRO AGUILERA SAGASTIZADO,)	
et al.)	
)	
Defendants.)	

**DEFENDANT’S NOTICE AND MOTION, WITH MEMORANDUM, TO COMPEL
DISCLOSURE OF FAVORABLE EVIDENCE AGAINST
WITNESSES NOT CALLED TO THE STAND BY THE GOVERNMENT**

COMES NOW the defendant, Marvin Menjivar Gutierrez, by counsel, and moves this Court, on May 16, 2023, at 9:00 a.m., or as soon thereafter as counsel may be heard, and moves this Court for an order compelling the government to provide all favorable evidence against witnesses not called to the stand by them. In support thereof, defendant states as follows.

Fed. R. Evid. 806 provides for the right of the defendant to attack the credibility of a declarant whose statement is offered as hearsay at trial:

When a hearsay statement, or a statement defined in Rule 801(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

The defendant moves the Court to order the government to disclose evidence which

impeaches witnesses not called to the stand, but whose statements will be introduced against the defendant by hearsay, pursuant to Fed. R. Evid. 801(d)(2)(E).

Such impeaching evidence would include, but are not limited to (1) any prior or subsequent inconsistent statements made by the declarants; (2) any prior convictions or juvenile adjudications of the declarants as described in Fed. R. Evid. 608(b); (3) any evidence relating to the witness that would be considered permitted Rule 404(b) evidence against the witness if the witness were considered a defendant; and (4) all considerations or promises (such as plea agreements containing the opportunity for a departure from a sentence) or threats, expressed or implied. The defendant specifically asks that the Court compel the government to inquire of its agents whether the witnesses may have offered varying versions of events, either related to the defendant or other defendants, that were not reduced to a written report, which, for example, were part of an initial or early debriefing at which no notes were taken.

WHEREFORE, Mr. Menjivar asks this Court for an order compelling the government to provide all favorable evidence against witnesses not called to the stand by them.

Respectfully submitted,

MARVIN MENJIVAR GUTIERREZ
By Counsel

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on or before the 21st day of April, 2023, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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